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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,195	09/14/2000	Keith H. Johnson	2000200-0003	2403

7590

08/12/2002

Brenda Herschbach Jarrell  
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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/662,195

Applicant(s)

JOHNSON, KEITH H.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-11 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11, and 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Amendment A and Request for the Extension of Time, received May 20, 2002 are acknowledged. Claims 1-3, 6-11, and 15-26 are included in the prosecution of this application. Claims 4, 5, and 12-14 are cancelled.

### ***Response to Arguments***

Applicant argues that Toshimitsu provides no indication of the shape and size of the fine clustered water used in the invention. Applicant argues that the prior art does not teach the symmetric micelles and multi-water cluster arrays. Lastly, applicant argues that Johnson teaches the use of water in fuels and one would not be motivated to combine the teachings of Toshimitsu and Johnson.

Applicant's arguments have been fully considered but they are not persuasive. In regard to the arguments directed towards Lorenzen and Lefebvre, the arguments are moot.

Toshimitsu teaches fine clustered water that is useful in a wide range of compositions from the cosmetic and pharmaceutical arts to the fuel industry. Toshimitsu teaches all the instantly claimed components in a cosmetic formulation. Although, Toshimitsu does not teach the instant size and arrangement of the water clusters, the examiner points out the rejection is a 103 and not 102. The examiner relies upon Johnson to teach the instant water cluster and size. Johnson teaches the method of producing water clusters and *a method* of using the water clusters. However, on column 8, lines 15-20, Johnson teaches the water clusters include reactive oxygen which is useful *any* oxidative reactions and in combination with an appropriate reaction partner.

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In regards to the argument that the prior art does not teach the limitation put in by the amendment of surfactants that are clathrated, etc., the examiner would like to point out, in the absence of unexpected results, Toshimitsu teaches surfactants in the fine clustered water and the surfactants would have the same reaction with the clustered water as the instant invention. Further, the examiner would like to point out that the claims are composition claims in regard to structure of the water and the prior art and the instant invention contain essentially the same components and would have the same effect and formation.

### **New Rejection in Light of Amendments**

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 6-11, and 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0916621 in view of Johnson et al (5800576).**

EP 0916621 discloses using fine clustered water for compositions such as pharmaceutical and cosmetic. The advantages of using microclustered water are disclosed: the superior ability to disperse oil and fats in order to prepare emulsions. It is further, disclosed that water-soluble surfactants must be added to the water in order to prepare the emulsion (note pg. 2, lines 6-25). The reference teaches water-in-oil emulsions containing microclustered water, surfactants (ethanol, polyoxyethylenecetyl

ether, etc.) and cosmetic oils (paraffin or olive). EP 0916621 discloses the compositions in various forms such as creams, gels, and liquids. Further, the reference discloses the use of additives such as fragrances and antioxidants. EP 0916621 discloses the use of borax in one of the compositions for stability of the emulsion. (Note examples 5-10)

The reference does not disclose the molecular arrangement or the size of the water.

Johnson et al disclose the water clusters in the instant arrangements (Note fig. 8 and 12). Although, the reference speaks on the use of clustered water for the fuel industry, Johnson et al disclose the importance of water in biological reactions (col. 1, lines 1-16). Johnson teaches the clustered water can be used in any oxidative reaction (col. 8, lines 15-20).

It is deemed obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of EP 0916621 and Johnson et al since the references discuss the importance of clustered water and the subsequent use of it various arts. One would be motivated to use Johnson's water in EP's composition since Johnson teaches the clustered water may be used in any oxidative reaction.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

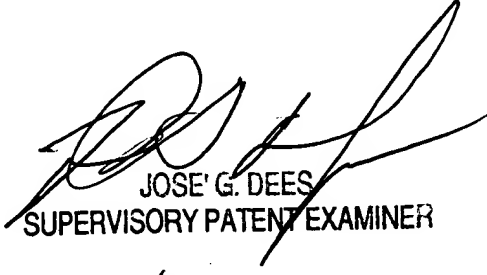
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-308-0196.

SSG

  
July 30, 2002

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1616

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**RECEIVED**  
MAY 05 2003  
OFFICE OF PETITIONS

**Eugene Berman**

**EBerman@SMS-LawFirm.Com**

May 5, 2003

Attention: Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

Re: Petition Under 37 CFR § 1.137(a) / U.S. App. Ser. No. 09/662,195

Gentleman/Ladies:

Enclosed are the following:

1. a Petition to Revive Under 37 CFR § 1.137(a);
2. a Statement Claiming Small Entity Status for the assignee, Nanocluster Technologies LLC; and
3. a Revocation and Power of Attorney form, with attached Statement Under 37 CFR § 3.73(b).

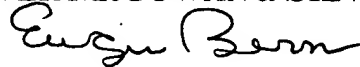
By letter dated May 1, 2003, Nanocluster Technologies LLC; submitted a similar filing together with a Petition Fee of \$55. However, the application was erroneously referred to as U.S. Application Ser. No. 09/229,941 (another application owned by the same entity). Please withdraw/disregard the earlier filing and apply the Petition Fee to this filing.

Please acknowledge your receipt of this application and fee by date stamping and returning the enclosed postage paid postcard receipt.

If there are any questions, please contact me at 202 861-1200.

Very truly yours,

**SILVER MCGOWAN & SILVER, P.C.**



By: Eugene Berman  
Reg. No. 22,587

Enclosure